



The Buy American Provision

Length: 0.5 hours

Professional Standards Learning Codes: 2420, 2460



This webinar is intended for the School Food Authorities in the State of Arizona. All regulations are specific to operating the National School Lunch Program under the direction of the Arizona Department of Education.



This webinar has been designed to assist School Food Authorities (SFAs) in understanding and complying with the Buy American provision. Employees with responsibilities related to procurement, including supplier contracts, food purchasing, menu planning and product receiving, will be instrumental in assuring compliance of the Buy American provision.

The background of the slide is a close-up, slightly blurred image of the American flag, showing the stars and stripes. A white rectangular box is overlaid on the flag, containing the text.

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What is the Buy American Provision?



Section 104(d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 added Section 12(n) to the National School Lunch Act (NSLA)(42 USC 1760(n)) which requires:

“school food authorities (SFAs) to purchase, to the maximum extent practicable, domestic commodities or products.”



Domestic Commodities or Products

Applies to **Unprocessed** and **Processed** Products

- Unprocessed Products
 - includes agricultural commodities
 - must be domestic
 - ex. apples

- Processed Products
 - must be **processed domestically**
 - use domestic agricultural food components
 - comprised of **over 51%** domestically grown products
 - ex. applesauce





Purchasers

- All procurement transactions for food when funds are used from the nonprofit school food service account
 - Directly by an SFA
 - On behalf of the SFA
 - Food Service Management Companies
 - Purchasing Cooperatives



Products from the U.S. Territories: Guam, American Samoa, Virgin Islands, Puerto Rico and Northern Mariana Islands are considered domestic products under the Buy American provision.

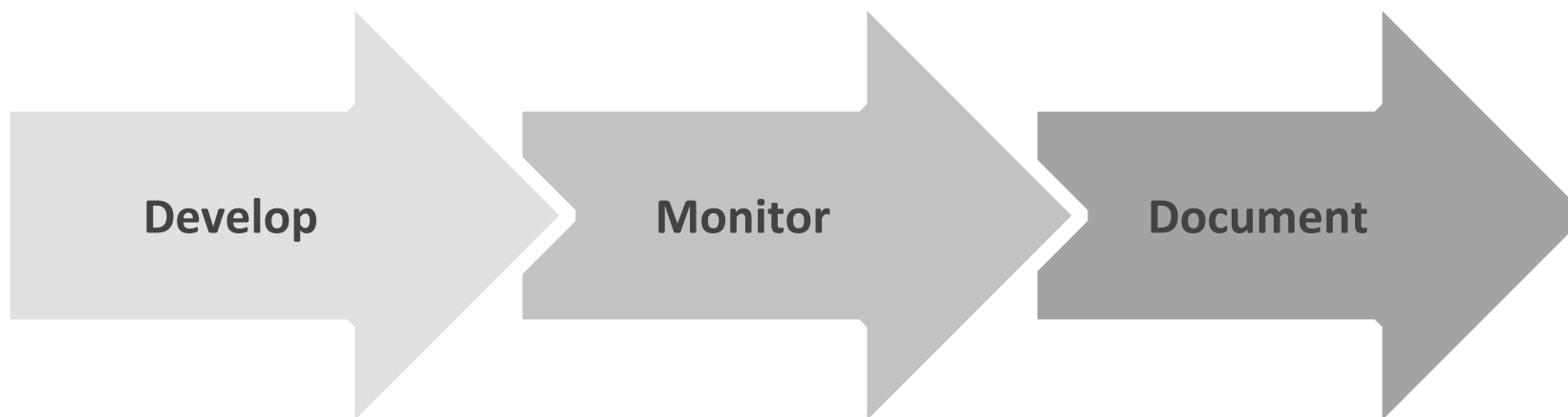
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Implementing the Buy American provision



SFA Steps to Implementing the Buy American Provision





Procurement

The key to implementating the Buy American Provision



Develop: Procurement Procedures

- Explain how SFA will follow the Buy American provision in Procurement Procedures
 - Procurement procedures are an internal SFA document that explain the procurement procedures the SFA will follow
 - Helps ensure prohibited or anti-competitive practices are not being employed

If written procedures do not currently exist, ADE has a Procurement Procedures Template available on our website at <http://www.azed.gov/hns/nslp/procurement/>.



Develop: Sample Language for Procurement Procedures

- Utilizing the Buy American definitions in 7 CFR 210.21(d) in all food product specifications, invitations for bids (IFBs), and requests for proposals (RFPs) for food products, contracts, purchase orders, and other procurement documents issued;
- Require a certification of domestic origin for products which do not have country of origin labels;



Develop: All Procurement Documents

Include Buy American requirements **in all procurement documents**

- Product Specifications
- Bid Solicitations
- Requests for Proposals
- Purchase Orders



Develop: Sample Specifications Include

- The SFA requires a certification of domestic origin for products which do not have country of origin labels; and
- The District participates in the National School Lunch Program (NSLP) and School Breakfast Program (SBP) and is required to use the nonprofit food service funds, to the maximum extent practicable, to buy domestic commodities or products for Program meals. A 'domestic commodity or product' is defined as one that is either produced in the U.S. or is processed in the U.S. substantially using agricultural commodities that are produced in the U.S. as provided in 7 CFR 210.21(d)



Develop: Requirement to Retain Records Documenting Exceptions

Exceptions to the Buy American provision are very limited; however, an alternative or exception may be approved upon request. To be considered for an alternative or exception, the request must be submitted in writing to a designated official, a minimum of __ day(s) in advance of delivery. The request must include the:

- a) Alternative substitute(s) that are domestic and meet the required specifications:
 - a) Price of the domestic food alternative substitute(s); and
 - b) Availability of the domestic alternative substitute(s) in relation to the quantity ordered.
- b) Reason for exception: limited/lack of availability or price (include price):
 - a) Price of the domestic food product; and
 - b) Price of the non-domestic product that meets the required specification of the domestic product.



Develop: Purchasing Methods

- Small Purchase Method: Include Buy American requirements in specifications
- Formal Purchase Method: Include Buy American requirements in solicitations
- Micro-Purchase Method: Check product labels to ensure food is domestic before purchasing



Develop: Other Contracts

Food Service Management Company

<http://www.azed.gov/hns/nslp/fsmc/>

Caterer

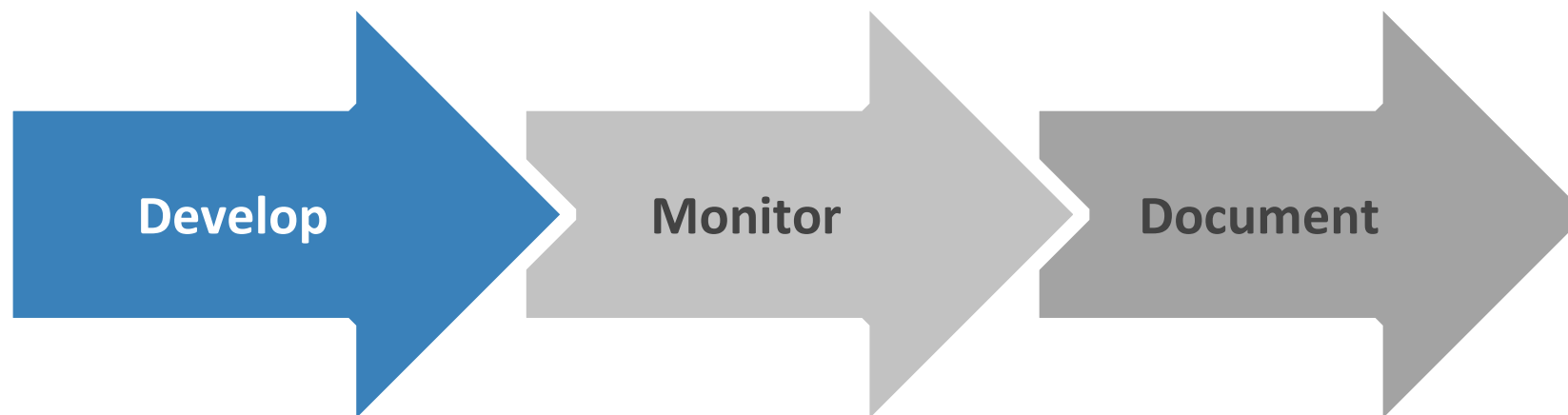
<http://www.azed.gov/hns/nslp/caterercontract/>

Inter-Agency Agreement - Catering

<http://www.azed.gov/hns/nslp/iaa/>



SFA Steps to Implementing the Buy American Provision





Monitor

- Check packaging information at delivery
 - Reject during receiving *warranted by contract language*
- Review invoices and receipts
- Determine the country of origin for all items delivered
- Check other documentation required of your supplier
- Review facilities periodically
 - Should include freezers, refrigerators, dry storage, and warehouses



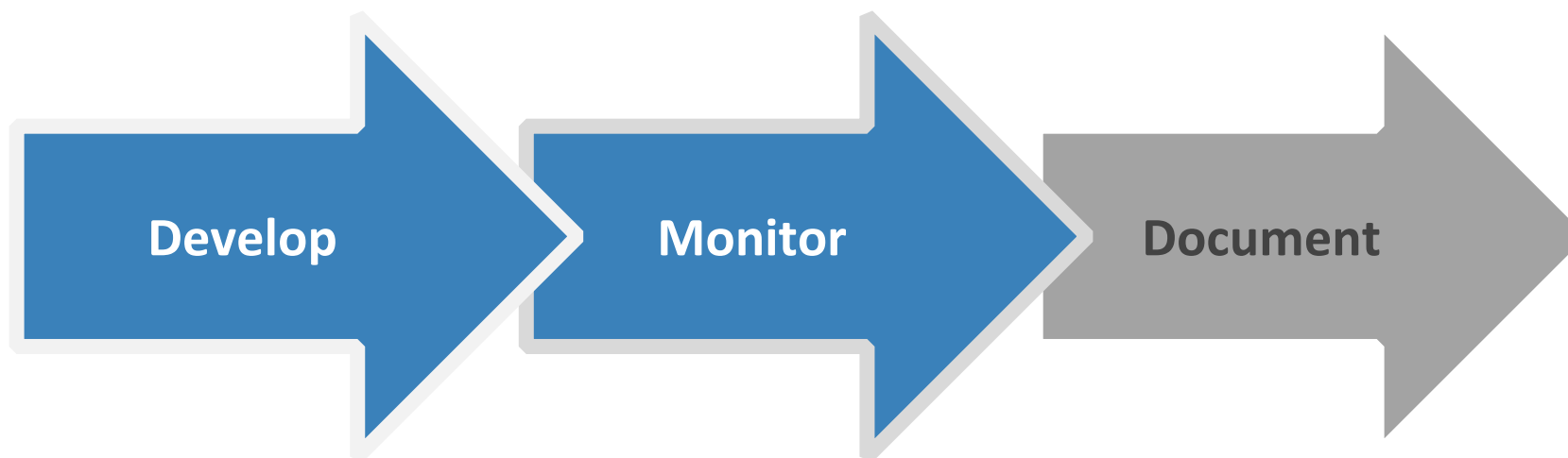
Monitor

- Approve and document exceptions from Caterers and Food Service Management Companies (FSMCs) and suppliers

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SFA Steps to Implementing the Buy American Provision





Document: Two Types of Exceptions

Availability: The product is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality.

Cost: Competitive bids reveal the costs of a U.S. product are
*significantly higher than the non-domestic product.

*There is not a specific amount or percentage that is considered significantly higher. It is the SFA's responsibility to determine the threshold.



Document: Buy American Exception Form



State of Arizona
Department of Education
Health and Nutrition Services Division



Buy American Exception Form

The Food and Nutrition Service (FNS) is enforcing the Buy American provision in 7 CFR Part 210.21(d), which requires School Food Authorities (SFAs) to purchase, to the maximum extent practicable, domestic commodities or products. This applies to food products purchased for use in Child Nutrition Programs by SFAs and entities acting on behalf of an SFA.

When the use of domestic foods is truly not practicable, two exceptions to the Buy American provision allow for the purchase of non-domestic products. The following **exceptions are to be used as a last resort**:

- **Availability:** The product is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality.
- **Cost:** Competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product.

Before utilizing an exception, alternatives to purchasing non-domestic products should be considered. For example, SFAs should ask:

1. Are there domestic sources for this product? **Yes / No**
2. When the non-domestic product is less expensive: is there a domestic product that could be easily substituted (for example domestic pears for non-domestic apples)? **Yes / No**
3. Is there a better time of year to solicit bids for this product? **Yes / No**

SFAs must provide supporting documentation justifying their use of the exception prior to purchasing the non-domestic product. This exception must be signed by an employee of the SFA and all documentation must be kept for 5 years. The Arizona Department of Education (ADE) recommends utilizing an exception to purchase and serve non-domestic products, such as bananas, no more than once within a **3-4 week** period. For additional guidance, refer to Memo SP 38-2017, *Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program*, on ADE's website at: <http://www.azed.gov/hns/memos/>.

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State of Arizona
Department of Education
Health and Nutrition Services Division



Buy American Exception Form

SFA Name: _____

SFA Contact: _____

Non-domestic commodity or product: _____

Hardship(s) experienced in procuring acceptable domestic product (check all that apply):

- ☐ Financial hardship (Attach documentation showing increased cost)
- ☐ Limited availability (Include documentation from vendors, with specific product names)

Describe in detail the hardship(s) indicated above.

Describe the efforts taken to find products that meet the Buy American provision.

☐ I understand that this exception only applies to the product identified above and it does not exempt the entire menu from meeting the Buy American provision.

SFA Contact Signature: _____ Date: _____

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State of Arizona
Department of Education
Health and Nutrition Services Division



Buy American Exception Tracking Form

The following chart may be used to document exceptions of a product throughout the duration of the year. Verify the exception is needed and valid at the time of each purchase.

ADE recommends utilizing an exception to purchase and serve non-domestic products, such as bananas, no more than once within a **3-4 week** period.

Product Name	Date Purchased	Is this exception still valid?	Notes/Comments

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Browser window showing the National School Lunch Program (NSLP) website at www.azed.gov/hns/nslp/. The page features a navigation bar with links to ADE, PARENTS & STUDENTS, SCHOOLS & TEACHERS, COMMON LOGON, and ADECONNECT. The main content area is titled "Health and Nutrition Services" and includes a section for the "National School Lunch Program".

Key links and resources highlighted:

- [Getting Started with NSLP in your District](#)
- [The At a Glance Calendar](#)
- [The Monthly Checklist](#)
- [Program Forms](#) (circled in red)

Below these links is a list of topics for the National School Lunch Program:

- ▶ Meal and Snack Requirements for School Nutrition Programs
- ▶ Training and Professional Standards
- ▶ The Administrative Review
- ▶ Local Wellness Policy
- ▶ Special Assistance Provisions
- ▶ Financial Management
- ▶ Food Safety
- ▶ Residential Child Care Institutions (RCCI)
- ▶ Verification
- ▶ Additional Guidance

On the right side, there is a "Trending Now" section with links to various resources:

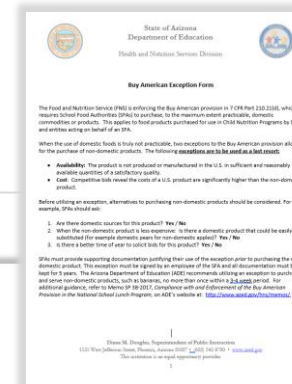
- Community Eligibility Q&A: Still Have Questions on How it Works?
- Summer Nutrition Programs
- Breakfast Matters: Back to School
- School Breakfast Grants Available Through the Arizona Association of Food Banks – Apply by June 7th!
- SFSP Sites Offering Meal Service During Teacher Strike

National School Lunch Program – Program Forms - Buy American Exception Form:

<http://www.azed.gov/hns/nslp/>



Document: Buy American Exception Form, page 1



Buy American Exception Form

The Food and Nutrition Service (FNS) is enforcing the Buy American provision in 7 CFR Part 210.21(d), which requires School Food Authorities (SFAs) to purchase, to the maximum extent practicable, domestic commodities or products. This applies to food products purchased for use in Child Nutrition Programs by SFAs and entities acting on behalf of an SFA.

When the use of domestic foods is truly not practicable, two exceptions to the Buy American provision allow for the purchase of non-domestic products. The following **exceptions are to be used as a last resort:**

- **Availability:** The product is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality.
- **Cost:** Competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product.



Document: Buy American Exception Form, page 1

Before utilizing an exception, alternatives to purchasing non-domestic products should be considered. For example, SFAs should ask:

1. Are there domestic sources for this product? **Yes / No**
2. When the non-domestic product is less expensive: Is there a domestic product that could be easily substituted (for example domestic pears for non-domestic apples)? **Yes / No**
3. Is there a better time of year to solicit bids for this product? **Yes / No**



Document: Buy American Exception Form, page 1

The form is titled "Buy American Exception Form" and is issued by the State of Arizona, Department of Education, Health and Nutrition Services Division. It contains instructions for School Food Authorities (SFAs) regarding the Buy American provision in 7 CFR Part 120.10(a), which requires SFAs to purchase domestic products to the maximum extent practicable. The form outlines exceptions to this requirement and lists criteria for when an exception can be granted, such as when a domestic product is not available or when it is not produced in the U.S. in sufficient quantities. It also includes a section for the SFA to provide supporting documentation justifying their use of the exception.

SFAs must provide supporting documentation justifying their use of the exception *prior* to purchasing the non-domestic product. This exception must be signed by an employee of the SFA and all documentation must be kept for 5 years. The Arizona Department of Education (ADE) recommends utilizing an exception to purchase and serve non-domestic products, such as bananas, no more than once within a 3-4 week period. For additional guidance, refer to Memo SP 38-2017, *Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program*, on ADE's website at: <http://www.azed.gov/hns/memos/>.



Document: Buy American Exception Form, page 2

State of Arizona
Department of Education
Health and Nutrition Services Division

Buy American Exception Form

SFA Name: _____

SFA Contact: _____

Non-domestic commodity or product: _____

Hardship(s) experienced in procuring acceptable domestic product (Check all that apply):

☐ Financial hardship (Attach documentation showing increased cost)

☐ Limited availability (Include documentation from vendors, with specific product names)

Describe in detail the hardship(s) indicated above: _____

Describe the efforts taken to find products that meet the Buy American provision: _____

☐ I understand that this exception only applies to the product identified above and it does not exempt the entire menu from meeting the Buy American provision.

SFA Contact Signature: _____ Date: _____

Revised 10/2019, Department of Public Services
1101 The Arizona State Capitol, Phoenix, AZ 85004-1700 • www.azdhs.gov
This document is a legal agreement product.

Buy American Exception Form

SFA Name: _____

SFA Contact: _____

Non-domestic commodity or product: _____

Hardship(s) experienced in procuring acceptable domestic product (Check all that apply):

☐ Financial hardship (Attach documentation showing increased cost)

☐ Limited availability (Include documentation from vendors, with specific product names)



Document: Examples of Documentation

- Records of communications between SFA and food supplier; this may include emails, documentation of telephone communications, etc.
- Third-party verification, such as through USDA Agricultural Marketing Service (AMS), to determine the cost and availability of domestic and nondomestic foods



Document: USDA Agricultural Marketing Service (AMS)

<https://www.ams.usda.gov/market-news>

USDA Market News | Agricultural Marketing Service

United States Department of Agriculture
Agricultural Marketing Service

Market News | Rules & Regulations | Grades & Standards | Services | Resources | Selling Food to USDA

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Market News

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- Dairy
- Livestock, Poultry & Grain
- Specialty Crops
- Tobacco
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- Organic
- Retail

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Contacts

Related Websites

- Foreign Agricultural Service (FAS)
- National Agricultural Statistics Service (NASS)
- Economic Research Service (ERS)
- Farm Service Agency (FSA)
- Market Information Organization of the Americas

USDA Market News

For 100 years, AMS has provided free, unbiased price and sales information to assist in the marketing and distribution of farm commodities. Each year, Market News issues thousands of reports, providing the industry with key wholesale, retail and shipping data.

The reports give farmers, producers and other agricultural businesses the information they need to evaluate market conditions, identify trends, make purchasing decisions, monitor price patterns, evaluate transportation equipment needs and accurately assess movement.

Market News captures data for:

- Cotton
- Dairy & milk products
- Fruits, vegetables & specialty crops
- Livestock, meats, poultry, eggs, grain & hay
- Organic
- Tobacco
- Local & regional foods

My Market News (API) Webinar files

Contact Market News

Market News MARS Portal



Document: Supporting Documentation

- Compare price and availability: USDA Agricultural Marketing Service (AMS)
<https://www.ams.usda.gov/market-news>

Location : BOSTON Commodity : LETTUCE, ROMAINE Package: cartons 12 18-oz (3 count)			
Date	Low-High Price	Mostly Low-High Price	Origin
08/06/2018	3.00 - 5.00	3.00 - 4.00	CALIFORNIA
08/06/2018	16.00 - 20.00	18.00 - 18.00	CALIFORNIA
08/06/2018	15.00 - 20.00	18.00 - 18.00	CANADA

Location : ATLANTA Commodity : CUCUMBERS Package: 1 1/9 bushel cartons Variet			
Date	Low-High Price	Mostly Low-High Price	Origin
04/16/2018	30.00 - 32.25	31.00 - 32.00	FLORIDA
04/16/2018	30.25 - 33.25	31.00 - 31.75	MEXICO

Location : COLUMBIA Commodity : HONEYDEWS Package: 2/3 cartons			
Date	Low-High Price	Mostly Low-High Price	Origin
11/14/2017	18.00 - 18.00		ARIZONA
11/14/2017	24.00 - 24.00		CALIFORNIA
11/14/2017	14.00 - 14.00		MEXICO



Document: Buy American Exception Form, page 2

Describe in detail the hardship(s) indicated above.

Describe the efforts taken to find products that meet the Buy American provision.

☐ **I understand that this exception only applies to the product identified above and it does not exempt the entire menu from meeting the Buy American provision.**

SFA Contact Signature: _____ Date: _____

State of Arizona
Department of Education
Health and Nutrition Services Division

Buy American Exception Form

SFA Name: _____

SFA Contact: _____

Non-domestic commodity or product: _____

Hardship(s) experienced in procuring acceptable domestic product (Check all that apply):

☐ Physical hardship (attach documentation showing increased cost)

☐ Limited availability (include documentation from vendor, with specific product name)

Describe in detail the hardship(s) indicated above: _____

Describe the efforts taken to find products that meet the Buy American provision: _____

I understand that this exception only applies to the product identified above and it does not exempt the entire menu from meeting the Buy American provision.

SFA Contact Signature: _____ Date: _____

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Buy American Exception Tracking Form

ADE recommends utilizing an exception to purchase and serve non-domestic products, such as bananas, no more than once within a 3-4 week period.



Document: Buy American Exception Form: page 3

Product Name	Date Purchased	Is this exception still valid?	Notes/Comments



Document: Buy American Exception Form, Example 1 - Bananas

Product Name	Date Purchased	Is this exception still valid?	Notes/Comments
Bananas	9/6/17	Yes	No domestic availability
Bananas	1/25/18	Yes	No domestic availability
Bananas	4/10/18	Yes	No domestic availability



Document: Buy American Exception Form, Example 1 - Bananas

USDA AMS: <https://www.ams.usda.gov/market-news>

Location : ATLANTA Commodity : BANANAS Package: 40 lb cartons institutional pack			
Date	Low-High Price	Mostly Low-High Price	Origin
09/06/2017	18.00 - 19.00	18.00 - 18.00	COLOMBIA
09/06/2017	18.00 - 19.25	18.00 - 18.00	ECUADOR

Location : BALTIMORE Commodity : BANANAS Package: 40 lb cartons			
Date	Low-High Price	Mostly Low-High Price	Origin
01/25/2018	20.00 - 22.00		COLOMBIA
01/25/2018	20.00 - 22.00		COSTA RICA
01/25/2018	20.00 - 20.00		GUATEMALA

Location : ATLANTA Commodity : BANANAS Package: 40 lb cartons institutional pack			
Date	Low-High Price	Mostly Low-High Price	Origin
04/10/2018	17.00 - 18.00	17.00 - 17.00	COLOMBIA
04/10/2018	17.00 - 18.00	18.00 - 18.00	ECUADOR



Document: Buy American Exception Form, Example 2 - Broccoli

USDA AMS: <https://www.ams.usda.gov/market-news>

Location : BOSTON Commodity : BROCCOLI Package: cartons					
Date	Low-High Price	Mostly Low-High Price	Origin	Origin District	Item Size
08/07/2017	16.00 - 20.00	18.00 - 20.00	CALIFORNIA		bchd 14s
08/07/2017	14.00 - 16.00	14.00 - 15.00	CANADA	ONTARIO	bchd 14s

Product Name	Date Purchased	Is this exception still valid?	Notes/Comments
Broccoli	8/7/18	Yes	Financial hardship



Document: Buy American Exception Form, Example 2 - Broccoli

USDA AMS: <https://www.ams.usda.gov/market-news>

Location : BALTIMORE Commodity : BROCCOLI Package: 20 lb cartons loose Variety: CROWN CUT Sub Variety: SHORT TRIM					
Date	Low-High Price	Mostly Low-High Price	Origin	Origin District	Item Size
04/16/2018	17.00 - 21.00	18.00 - 18.00	CALIFORNIA		
04/16/2018	18.00 - 19.00	18.00 - 18.00	MEXICO		

Product Name	Date Purchased	Is this exception still valid?	Notes/Comments
Broccoli	8/7/18	Yes	Financial hardship
Broccoli	4/16/18	No	



Document: Buy American Exception Form <http://www.azed.gov/hns/nslp/>



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Health and Nutrition Services Division



Buy American Exception Form

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SFA Contact: _____

Non-domestic commodity or product: _____

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SFA Contact Signature: _____ Date: _____

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Buy American Exception Tracking Form

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Monitoring of the Buy American provision by ADE

The background of the slide is a close-up, slightly blurred image of the United States flag, showing the stars and stripes in detail.

50%

Arizona SFAs reviewed in SY2017/2018 in violation of the
Buy American provision



Monitoring of the Buy American provision by ADE

- Completed through the Administrative Review and Procurement Review
- Reviews are conducted once every three-year cycle



Monitoring of the Buy American provision by ADE: Administrative Review

- While on-site, Reviewers will look at labels on a variety of food products in all food storage facilities
- If non-domestic products are found, exception documentation will be reviewed
- If found to be non-compliant, corrective action will be issued



Food Component Categories

- Bakery, pasta, and other miscellaneous components:
 - grain components delivered ready to serve
 - wheat flour, cornmeal, or other grain flours, used to prepare grain components such as pasta, bread etc.
- Canned fruit and fruit juice
- Canned vegetables and vegetable juice
- Frozen fruit and fruit juice
- Frozen vegetables and vegetables juice
- Frozen meat/entrée items
- Refrigerated foods, including but not limited to:
 - produce
 - dairy such as cheese, yogurt, and milk
 - food components that may be thawing for future meal service



Monitoring of the Buy American Provision by ADE: Procurement Review

- Review of Procurement Procedures/Plan
- Review of Solicitations and Contracts
- Review sample of supplier invoices and/or receipts
- If found to be non-compliant, corrective action will be issued

The background of the slide is a close-up, slightly blurred image of the American flag, showing the stars and stripes in detail.

4

Buy American Tools and Resources



Tools and Resources

- **Buy American Exception Form**
<http://www.azed.gov/hns/nslp/forms/>
- **USDA Compliance with and Enforcement of the Buy American Provision in the NSLP SP 38-2017**
<http://www.azed.gov/hns/memos/>
- **USDA Agricultural Marketing Service**
<https://www.ams.usda.gov/>
- **ADE CNP Procurement**
<http://www.azed.gov/hns/nslp/procurement/>
- **Arizona Farm to School** <http://www.azed.gov/hns/azf2s/>



Leverage Your Local to Support the Buy American provision

- Arizona producers meet compliance for Buy American provision and can substitute import items with items grown close to home:
 - Arizona's vegetable production can help meet subgroup compliance for **dark green** and **red/orange**
 - Relationships with producers provide opportunities to select items before they are harvested for meal service
 - Menu marketability encourages student participation

We're Proud to Offer



Fruits and Vegetables



- Seasonal purchasing teaches students about Arizona's agriculture industry
- Arizona is a top market for winter produce like leaf lettuces, broccoli, celery, carrots and winter squash
- Try Arizona Department of Agriculture's Harvest Calendar!



Local Mix for DoD Fresh Program SY18

Farm	Item	Pack size	AFT Item number	DOD Item Codes	Estimated 2017-2018 usage (Aug-May)	Available
Martori Farms	Cantaloupe*	12ct	12020	14J94	3,350	May - Nov
Martori Farms	Watermelon (seedless)*	1 each	37950	18D91	7,000	May - Sept
Martori Farms	Honey Dew8	6ct	12040	14P04	New Item	May - Oct
Rousseau Family Farms	Carrots*	72/3oz	19155	16234	3,300	Jan - July
Rousseau Family Farms	Carrots*	30/1lb	19100	15014	2,650	Jan - July
Rousseau Family Farms	Cabbage*	24 ct	18415	15N56	220	Mid-Oct-March
Blue Sky	Spring mix*	3lb	03330	16205	1,040	Oct - June
Abby Lee Farms	Cherry Tomatoes*	12/8 oz	08976	16W49	495	Mid-Oct-thru Fall 18
Abby Lee Farms	Cucumbers*	16ct	20115	need #	New Item	Year round
Wholesum Harvest	Tomato on the Vine*	11lb	08505	17D48	1,500	Year round
Arizona Microgreens	Pea Shoots*	8oz	26098	18K52	New Item	September - May

*This item is subject to change and was last updated December 2017.

This institution is an equal opportunity provider





Frequently Asked Questions, page 1

What if I receive non-domestic items from my distributor?

Contract language will determine the course of action to take. Slides 14 and 15 cover sample contract language you may want to include. USDA Memo SP 38-2017 has additional contract language you may wish to consider.

Is it only food from the 50 states that is considered domestic?

No. Products from Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands are allowed under the Buy American provision as these products are from the territories of the United States.

When do I document an exception?

Exceptions must be documented before utilizing an exception. Documentation must be maintained for five years.

Do I have to use ADE's Buy American Exception Form?

No. Exceptions can be documented using records of communication between the SFA and the supplier such as emails or documentation of phone conversations. Documentation should include specific product names and dates and should be kept on file for five years. SFAs may also utilize reports available at <https://marketnews.usda.gov>

Does ADE have to approve my exceptions?

If an SFA is using one of the two exceptions defined by the USDA then the SFA does not have to request approval from the State agency to purchase a non-domestic product. For the types of exceptions see slide 22.



Frequently Asked Questions, page 2

How do I know if the language in my contract/bid solicitation is appropriate to address Buy American?

Refer to Memo SP 38-2017 available at <http://www.azed.gov/hns/memos/> for sample language and utilize ADE templates at <http://www.azed.gov/hns/nslp/>.

Do I need to complete an exception form for each site or for the district?

An exception is required for each purchase of a non-domestic product. If the purchase of a non-domestic product was made by the district for multiple sites, then one exception form would be used for that purchase. If the purchase of a non-domestic product was made for a single site an exception form would be used for that purchase by the site.

If my school purchases food from an account other than the non-profit school food service account does it have to follow the Buy American provision?

No. The Buy American provision applies to purchases using any funds from the nonprofit food service account. If any part of the payment is made with funds from the non-profit school food service account then the Buy American provision applies.

What do I do if my vendor or caterer is not following the Buy American provision found in the contract/solicitation?

You may have the option to terminate your contract. Work with your ADE School Nutrition Programs Specialist and Contracts Management Officer for further guidance.



Frequently Asked Questions, page 3

Are FSMC's or caterers exempt from Buy American provision?

Any entity that purchases food or food products on behalf of the SFA must follow the same Buy American provision and exceptions that the SFA is required to follow. SFAs must ensure that all agricultural commodity or food products procured using funds from the nonprofit school food service account comply with the Buy American provision.

Does the Buy American Provision apply to RCCIs and Juvenile Detention Centers?

Yes, the provision applies to ALL types of organizations operating School Nutrition Programs.

Does the Buy American provision apply to the After School Care Snack Program?

Yes, this provision applies to ALL School Nutrition Programs including: National School Lunch Program, School Breakfast Program, After School Care Snack Program, Special Milk Program, Fresh Fruit and Vegetable Program, At Risk After School Meals, and Summer Food Service Program.

If I purchase food from a local grocery store does the product have to meet Buy American requirements?

Yes. Any food purchased with funds from the non-profit school food service account, regardless of the supplier, must meet the requirements of the Buy American provision. In this scenario please check the label at the store.



Frequently Asked Questions, page 4

My students love bananas. Can I serve these every day if I have documentation on file?

According to the USDA exceptions to the Buy American provision are limited and alternatives to purchasing non-domestic food commodities or products should be considered first. In addition to considering alternatives, reasons for any exceptions must be provided as to why the domestic product is being substituted with a non-domestic commodity or product. Student preference alone is not a sufficient reason for an exception. One resource SFAs may use when considering alternatives is the market news reports available from the Agricultural Marketing Service (AMS). AMS provides free, unbiased price and sales information on agricultural commodities. AMS can be accessed at <https://www.ams.usda.gov/market-news>.

Can ADE provide a list of foods that are not available domestically and therefore not subject to the Buy American provision?

According to the USDA, State agencies may not make the determination that a domestic commodity or product is not available. Each SFA should determine on an individual basis, whether domestic alternatives exist first, and if not, whether an exception is warranted. Please refer to slide 22 which reviews the two types of exceptions allowed.



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To request a certificate, please go to the next slide.

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